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## **OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT**

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**Date Issued:** July 23, 2010

**IBA Report Number:** 10-65

**City Council Meeting Date:** July 26, 2010

**Item Number:** 152

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# **Proposed Ballot Measure for the November 2, 2010 Municipal Special Election Regarding Employment of the Deputy City Attorneys**

## **OVERVIEW**

On July 26, 2010, the City Council will be asked to adopt an ordinance to submit a ballot measure to the voters for the November 2010 election to amend the City Charter regarding the employment of the Deputy City Attorneys. If approved, the measure would amend San Diego City Charter Sections 30, 40, and 117 to establish a good cause requirement for the termination or suspension of Deputy City Attorneys who have served continuously for two years or more. It also provides an exception that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel.

On June 28, 2010 the City Council directed the City Attorney to prepare an ordinance with appropriate ballot language for the proposed Charter amendment, as proposed by the Deputy City Attorneys Association (DCAA).

The IBA previously issued Report No. 10-57 on this matter, and indicated concerns regarding possible impacts of the measure. Language changes have been incorporated in to the proposed ballot measure since this item was last discussed by the Council, in part to respond to the issues raised by the IBA.

The IBA requested a written memorandum from DCAA representatives to describe the specific changes made to the proposal. This memorandum is provided as an attachment to this report. This report reiterates some of the observations and conclusions discussed in our previous report, and highlights changes that have been made from previous language versions. Descriptions of revisions since the previous proposal are shown in bold.

## FISCAL/POLICY DISCUSSION

The proposed measure would change the status of Deputy City Attorneys; while positions would still be considered unclassified, they would no longer serve in an “at-will” capacity. If approved by voters, changes would become effective January 1, 2011.

### Changes to Charter Section 117: Unclassified and Classified Services

Charter Section 117 states that “Employment in the City shall be divided into the Unclassified and Classified Service.” It also states that “The Classified Service shall include all positions not specifically included by this section in the Unclassified Service.” Currently, the Charter indicates that “All Assistant and Deputy City Attorneys” are included in the Unclassified Service. The proposal would eliminate Deputy City Attorneys from the list of “Unclassified” positions. However, it would not move them to the “Classified” service.

### Changes to Charter Section 30: Removal of Unclassified Officers

Proposed changes to Charter Section 30 would exclude Deputy City Attorneys from those employees in the unclassified service that can be removed at any time.

This language is intended to address the concern that a newly elected City Attorney could choose to remove existing Deputy City Attorneys (regardless of job performance) and have them replaced as he/she desires.

**Revisions from the previous proposal include the removal of the term “salary reductions” from the list of topics/issues in which procedures are to be established in compliance with the Meyers-Milias-Brown Act.**

### Changes to Charter Section 40: City Attorney

The requested changes to Charter Section 40 include the following additions:

“The City Attorney may appoint no more than six Assistant City Attorneys and four other assistants, who shall serve at the pleasure of the City Attorney and may be removed by the City Attorney at any time.”

“No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for two years or more shall be

terminated, suspended ~~or have his or her salary reduced~~ without good cause except that a Deputy City Attorney may be subject to layoff due to lack of work ~~or lack of funds~~ insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney.”

The first addition specifies a maximum number of Assistants that the City Attorney may appoint and remove at any time. These positions would remain unclassified.

The second language addition creates the requirement for Deputy City Attorneys to experience a two-year probationary period, after which they then receive job protection, and can only be removed for good cause.

**Changed from the previous proposal is the removal of the language “or have his or her salary reduced”.** In our previous report, the IBA noted that this language seems to eliminate future salary reductions, and we expressed concern to representatives of the DCAA that this language appears to limit the ability of the Mayor and City Council to implement possible budget reductions, including across-the-board salary and/or benefit reductions in the future. Given the City’s current structural budget deficit, it would seem inappropriate to eliminate options available to balance the budget, especially as benefit changes are being considered. This language was struck in response to these concerns.

**Also changed is the substitution of “insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney” in place of “lack of funds”.** This language change is intended to clarify terminology and to ensure consistency with other Charter sections relating to personnel budgets and workforce reductions.

#### Fiscal Impact of Measure

The DCAA has indicated that the Charter changes would result in cost savings; by retaining experienced attorneys, the City will be able to reduce the use of outside counsel and reduce related fees. At the request of the DCAA, the Risk Management Department provided a summary of the annual costs for outside counsel since Fiscal Year 2005. These figures show that costs for outside counsel steadily increased from \$4.6 million in FY 2005 to \$10.9 million in FY 2009, and appear to have declined in FY 2010 to \$6 million.

<b>City of San Diego Outside Counsel Expenditures As of June 25, 2010 Source: Risk Management Department</b>	
<b>Fiscal Year</b>	<b>Amount</b>
2005	\$4,605,870
2006	6,176,221
2007	8,940,062
2008	8,748,279
2009	10,915,231
2010	6,037,214
<b>Grand Total</b>	<b>\$45,422,877</b>

The use of outside counsel is dependent on the number, subject area, type, and complexity of cases in which the City becomes involved. In addition, the use of outside counsel may become necessary if a conflict of interest exists. The retention of experienced attorneys is likely to contribute to a more cost effective and efficient legal team, but it is not expected to fully eliminate the need for the use of outside counsel by the City. It is difficult to estimate the impact of the Charter changes on the City's costs in this area; however, savings should result.

## CONCLUSION

The IBA has reviewed the proposed Charter changes related to the DCAA ballot measure, and the revisions since the previous proposal. In general, the proposal will provide job protection to Deputy City Attorneys and assist in the retention of experienced attorneys to the benefit of the City, if approved by San Diego voters.

Changes since the last proposal have addressed the most significant concerns previously raised by the IBA, by removing language that would seem to limit the ability of the Mayor and City Council to implement possible budget reductions, including across-the-board salary and/or benefit reductions in the future.

**[SIGNED]**

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**[SIGNED]**

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APPROVED: Andrea Tevlin  
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Attachment: Memo from DCAA